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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

<b>HOLLY GRAMMATICO,</b>	) <b>Case No.: '14CV2406 GPC RBB</b>
	)
<b>Plaintiff,</b>	) <b>COMPLAINT FOR DAMAGES</b>
	) <b>1. VIOLATION OF THE FAIR</b>
<b>v.</b>	) <b>DEBT COLLECTION PRACTICES</b>
	) <b>ACT, 15 U.S.C. §1692 ET. SEQ.</b>
	)
<b>MIDLAND FUNDING, LLC,</b>	) <b>JURY TRIAL DEMANDED</b>
<b>MIDLAND CREDIT</b>	)
<b>MANAGEMENT, INC; and</b>	)
<b>ENCORE CAPITAL GROUP, INC.,</b>	)
	)
<b>Defendants.</b>	)

**COMPLAINT AND DEMAND FOR JURY TRIAL**

HOLLY GRAMMATICO (“Plaintiff”), by and through her attorneys,  
KIMMEL & SILVERMAN, P.C., alleges the following against MIDLAND  
FUNDING, LLC (“Midland”), MIDLAND CREDIT MANAGEMENT, INC.  
 (“MCM”); and ENCORE CAPITAL GROUP, INC. (“Encore”):

## INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

## JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendants conduct business in the State of Colorado, and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

## PARTIES

5. Plaintiff is a natural person residing in Colorado Springs, Colorado 80910.

6. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).

7. In the alternative, Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. §1692k(a) and Wenrich v. Cole, 2000 U.S. Dist LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

1           8. Defendant MCM is a debt collection company with its headquarters  
2 located at 8875 Aero Drive, San Diego, California 92123.

3  
4           9. Defendant Midland is a debt collection company with its  
5 headquarters located at 8875 Aero Drive, San Diego, California 92123.

6  
7           10. Defendant Encore is a corporation specializing in debt collection with  
8 its principal place of business located at 8875 Aero Drive, San Diego, California,  
9 92123.

10  
11           11. Defendants are “debt collectors” as that term is defined by 15 U.S.C.  
12 § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

13  
14           12. Defendants acted through their agents, employees, officers, members,  
15 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
16 representatives, and insurers.

17  
18                           **FACTUAL ALLEGATIONS**

19           13. At all relevant times, Defendants contacted Plaintiff in their attempts  
20 to collect a consumer debt.

21  
22           14. Upon information and belief, the alleged debt arose out of  
23 transactions which were for personal, family, or household purposes.

24  
25           15. Beginning in or around June 2014, Defendants’ collectors repeatedly  
26 and continuously contacted Plaintiff on her cellular telephone in their attempts to  
27 collect the alleged consumer debt.  
28

1           16. Defendants' calls originated from numbers including 877-411-5551,  
2 which the undersigned has confirmed belongs to Defendant MCM.

3  
4           17. Defendants called Plaintiff, on average, between two (2) and three (3)  
5 times per day in their attempts to collect the alleged debt.

6  
7           18. Frustrated by the continuous and repetitive collection calls, Plaintiff  
8 told Defendants' collectors that she wanted their calls to cease.

9  
10           19. Plaintiff reiterated this request on June 29, 2014, and in response  
11 Defendants' collector hung up on Plaintiff.

12           20. Additionally, in her desire to stop Defendants' repetitive phone calls,  
13 Plaintiff would answer Defendants' calls and immediately hang up, signaling that  
14 its calls were unwanted.

15  
16           21. However, Defendants continued calling Plaintiff.

17  
18           22. Once Defendants was told the calls were unwanted and to stop, there  
19 was no lawful purpose to making further calls, nor was there any good faith reason  
20 to place calls.

21  
22           23. Finally, within five (5) days of its initial communication with  
23 Plaintiff, Defendants failed to send Plaintiff written notice setting forth her rights  
24 to dispute the debt and/or seek verification of the debt pursuant to the FDCPA.

25  
26           24. Defendants' actions as described herein were taken with the intent to  
27 harass, frustrate and coerce payment from Plaintiff.  
28

**DEFENDANTS VIOLATED THE  
FAIR DEBT COLLECTION PRACTICES ACT**

**COUNT I**

25. Defendants' conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. §§ 1692d, and 1692d(5).

- a. A debt collector violates § 1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.
- b. A debt collector violates § 1692d(5) of the FDCPA by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- c. Defendants violated 15 U.S.C. §§ 1692d, and 1692d(5) of the FDCPA when it called Plaintiff on her cellular telephone, continuously and repeatedly, between two (2) and three (3) times per day; and continuing to call Plaintiff after she hung up on their collectors, with the intent to annoy and harass her.

**COUNT II**

26. Defendants' conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. § 1692f.

1 a. A debt collector violates § 1692f of the FDCPA by using  
2 unfair or unconscionable means to collect or attempt to collect  
3 any debt.  
4

5 b. Here, Defendants violated 15 U.S.C. § 1692f of the FDCPA  
6 by failing to update their records to reflect that Plaintiff  
7 demanded that their calls cease.  
8

9  
10  
11 **COUNT III**

12 27. Defendants' conduct, as detailed in the preceding paragraphs, violated  
13 15 U.S.C. § 1692g.  
14

15 a. A debt collector violates § 1692g(a) of the FDCPA by failing  
16 to send to the consumer, within five days after its initial  
17 communication with a consumer in connection with the  
18 collection of a debt, a written notice containing: (1) the  
19 amount of the debt; (2) the name of the creditor to whom the  
20 debt is owed; (3) a statement that unless the consumer, within  
21 thirty days after receipt of the notice, disputes the validity of  
22 the debt, or any portion thereof, the debt will be assumed to be  
23 valid by the debt collector; (4) a statement that if the  
24 consumer notifies the debt collector in writing within the  
25  
26  
27  
28

1 thirty-day period that the debt, or any portion thereof, is  
2 disputed, the debt collector will obtain verification of the debt  
3 or a copy of a judgment against the consumer and a copy of  
4 such verification or judgment will be mailed to the consumer  
5 by the debt collector; and (5) a statement that, upon the  
6 consumer's written request within the thirty-day period, the  
7 debt collector will provide the consumer with the name and  
8 address of the original creditor, if different from the current  
9 creditor.  
10  
11  
12

13  
14 b. Here, Defendants violated § 1692g of the FDCPA by failing  
15 to send written notification, within five (5) days after its initial  
16 communication with Plaintiff, advising Plaintiff of her rights  
17 to dispute the debt or request verification of the debt or  
18 providing him with the name of the original creditor and the  
19 amount of the debt.  
20  
21  
22

23 WHEREFORE, Plaintiff, HOLLY GRAMMATICO, respectfully prays for a  
24 judgment as follows:  
25

26 a. All actual damages suffered pursuant to 15 U.S.C. §  
27 1692k(a)(1);  
28

- 1           b.     Statutory damages of \$1,000.00 for the violation of the FDCPA  
2  
3                     pursuant to 15 U.S.C. § 1692k(a)(2)(A);  
4  
5           c.     All reasonable attorneys' fees, witness fees, court costs and  
6                     other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.  
7                     § 1693k(a)(3); and  
8           d.     Any other relief deemed appropriate by this Honorable Court.  
9

10  
11                     **DEMAND FOR JURY TRIAL**

12           PLEASE TAKE NOTICE that Plaintiff, HOLLY GRAMMATICO,  
13  
14 demands a jury trial in this case.

15  
16                                     RESPECTFULLY SUBMITTED,  
17

18           DATED: 10/9/2014

                                   KIMMEL & SILVERMAN, P.C.

19                                     By: /s/ Amy L. Bennecoff  
20                                     Amy L. Bennecoff (275805)  
21                                     30 East Butler Pike  
22                                     Ambler, PA 19002  
23                                     Telephone: (215) 540-8888  
24                                     Facsimile (215) 540-8817  
25                                     Email: abennecoff@creditlaw.com  
26                                     Attorney for Plaintiff  
27  
28



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
HOLLY GRAMMATICO

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Amy L. Bennecoff, Esq., Kimmel & Silverman, P.C.  
30 East Butler Pike, Ambler, PA 19002  
(215) 540-8888

**DEFENDANTS**

MIDLAND FUNDING, LLC, MIDLAND CREDIT MANAGEMENT, INC;  
and ENCORE CAPITAL GROUP, INC.

County of Residence of First Listed Defendant San Diego  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'14CV2406 GPC RBB**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>LABOR</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. 1692k

Brief description of cause:  
Fair Debt Collection Practices Act

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

10/09/2014

SIGNATURE OF ATTORNEY OF RECORD

/s/ Amy L. Bennecoff

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_